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reasons analogous to those for the defense of impossibility in an ordinary action on the contract. See Sedg. Dam., 8th ed., sec. 1006. But where the breach is wilful, there is no reason for reducing the damages, and full compensation is allowed. *Western R. R. v. Babcock*, 6 Met. (Mass.), 346; *Barbour v. Nichols*, 3 R. I. 187; *Allen v. Atkinson*, 21 Mich. 351. Nor is the principal case supported by the decisions of its own jurisdiction, for the authority cited as extending the rule in Virginia is, in so far as it is in point, confined to cases of failure of title, and two decisions tend to establish the proper rule of damages. *Wilson v. Spencer*, 11 Leigh (Va.), 261; *Newbrough v. Walker*, 8 Gratt. (Va.), 16.

The *Michigan Law Review* thus reports and comments on the same case:

"The defendant contracted to sell trees to the plaintiff, which in a previous suit between the same parties, had been held to be realty. The defendant having received a better offer, refused to perform. In an action for damages for breach of the contract, *Held*, that the measure of damages is the contract price, and not the difference between the contract price and the market value at the time of the breach. By the contract price is meant the purchase money actually paid, and interest thereon. *Stuart v. Pennis* (1902) (Va.), 42 S. E. Rep. 667.

"The court in this case used the term contract price, and yet gave it the meaning of the purchase price paid. There are several rules by which the measure of damages is ascertained. One adopted by some courts is the difference between the contract price and the market value at the time of the breach. *Pumpelly v. Phelps*, 40 N. Y. 64; *Margraf v. Muir*, 57 N. Y. 155; *Dorherty v. Dolan*, 65 Me. 87, 20 Am. Rep. 677; *Leggett v. Mut. Life Ins. Co.*, 53 N. Y. 394; *Baldwin v. Munn*, 2 Wend. 399; *Brigham v. Evans*, 113 Mass. 538; *Muenchow v. Roberts*, 77 Wis. 520, 46 N. W. 802; *Irwin v. Askeu*, 74 Ga. 581; *Dunshee v. Geoghegan*, 7 Utah, 113, 25 Pac. Rep. 731; *Mayne on Dam.* 208; *Sedgwick on Dam.*, sec. 1005, 1006. The weight of authority is with *Hopkins v. Lee*, 6 Wheat. (U. S.) 109, in allowing the difference between the contract price and the market value as the measure of damages, or, if the contract price has been paid, then the full market value. See *Sedgwick on Dam.* 111, 1012, and cases there cited. According to a few cases, the rule of nominal damages and the consideration paid, is established. *Bain v. Fothergill*, L. R. 6 Ex. 59, L. R. 7 H. L. 158; *Buck v. Serrill*, 80 Pa. St. 413; *McCafferty v. Griswold*, 99 Pa. St. 270. According to the decisions of Virginia this case is correctly decided, but it is contrary to the weight of authority in the United States. Upon principle it is weak in that it allows the vendor to break his contract with impunity. The property having risen in value, he refuses to perform his contract, and this rule does not give any value to that contract in favor of the vendee. Should the property fall in value, the vendor can still hold the vendee. The effect of the rule is unjust."

Our criticism of the decision conceded its possible correctness under previous rulings in this State, but pointed out its rank injustice, and suggested alteration of the rule by act of the legislature.

NATIONAL BANKS—POWERS—LEASING AND IMPROVEMENT OF REAL ESTATE.
A case of much importance to national banks contemplating the purchase or leasing of real estate for the erection of a bank building, which need not be

limited to its own uses but may be rented or sub-rented as to portions of it, is that of *Brown v. Schleier* (C. C. A.) 118 Fed. 981. It was held:

1. That section 5137 of the Revised Statutes U. S., touching the power of such an association to hold real property, is not violated by its lease of land upon which it erected a building not only "for its immediate accommodation in the transaction of its business," but for renting in part to third parties.

2. That section 5202 of the Revised Statutes is not violated because by making the lease the association contracted an indebtedness exceeding its capital stock by engaging to pay a stipulated rent for a term of ninety-nine years.

3. That the fact that such a term is for a longer period than the association is to exist as a corporation does not make the execution of the lease *ultra vires*.

Upon the first point, the court, per Gilbert, Circuit Judge, said:

"We entertain no doubt that the power conferred on national banks by section 5137 of the Revised Statutes to purchase such real estate as is needed for their accommodation in the transaction of their business includes the power to lease property whereon to erect buildings suitable to their wants. The power to purchase land is larger than the power to lease by as much as a fee simple estate is larger than a term for years, and the greater power includes the less. In the larger towns and cities of the United States, national banks usually find it necessary to locate themselves in the business centers, where property is most in demand and likewise most valuable. In the large cities it will doubtless sometimes happen that a bank cannot locate itself in a quarter where its business interests demand that it should be located, unless it leases property for a term of years and agrees with the owner to erect a building thereon suitable to its wants. That a national bank may purchase a lot of land and erect such a building thereon as it needs for the accommodation of its business admits of no controversy under the language of the statute, and we perceive no reason why it may not likewise lease property for a term of years and agree with the lessor to construct such a building as it desires, provided, always, that it acts in good faith, solely with a view of obtaining an eligible location, and not with a view of investing its funds in real property or embarking them in speculations in real estate. Nor do we perceive any reason why a national bank, when it purchases or leases property for the erection of a banking house, should be compelled to use it exclusively for banking purposes. If the land which it purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive. There is nothing, we think, in the national bank act, when rightly construed, which precludes national banks, so long as they act in good faith, from pursuing the policy above outlined. The act was framed with a view of preventing such associations from investing their funds in real property, except when it becomes necessary to do so, either for the purpose of securing an eligible business location, or to secure debts previously contracted, or to prevent a loss at execution sales under judgments or decrees that have been rendered in their favor. When an occasion arises for an investment in real property for either of the purposes specified in the statute, the national bank act permits banking associations to act as any prudent person would act in making an investment in real estate, and to exercise

the same measure of judgment and discretion. The act ought not to be construed in such a way as to compel a national bank, when it acquires real property for a legitimate purpose, to deal with it otherwise than a prudent landowner would ordinarily deal with such property."

Upon the second point, the court said:

"The national bank act confessedly confers power upon national banks to lease property which they need for the convenient transaction of their business, and it contains no express provision limiting the duration of such leases. Their duration is left to be determined by the judgment and discretion of the bank or its board of directors. Very frequently such associations are compelled to pay a large annual rental, and it can hardly be supposed that congress intended that the various installments of rent that an association has obligated itself to pay under a lease for a long term of years, which it executed because it was necessary to do so to secure an eligible business location, should be aggregated and counted as a debt within the purview of section 5202, *supra*. Rent is one of those ordinary expenditures which such associations are compelled to incur and pay; and installments of rent that are to be earned by the occupation of the demised premises in future years, and may never in fact be earned, can hardly be esteemed an indebtedness, and certainly not an indebtedness within the fair purview of section 5202, until it has accrued. In *Deane v. Caldwell*, 127 Mass. 242, 244, it was held that, before the day on which rent is covenanted to be paid, it is in no sense a debt." Citing further, *City of Walla Walla v. Walla Walla Co.*, 172 U. S. 1; *City of South Bend v. Reynolds* (Ind. Sup.), 57 N. E. 706, 49 L. R. A. 795; *Trust Co. v. Armstrong*, 35 Fed. 569.

Upon the third point, the court said:

"If a corporation is empowered to acquire real estate by purchase or lease for the transaction of its business, it matters not that it acquires an estate or interest which will not expire until after the death of the corporation, provided the estate or interest so acquired is vendible. *Detroit Citizens' St. Ry. Co. v. City of Detroit*, 12 C. C. A. 365, 64 Fed. 628; *Nicoll v. Railroad Co.*, 12 N. Y. 121, 128; *People v. O'Brien*, 111 N. Y. 1, 37, 18 N. E. 692, 2 L. R. A. 255, 7 Am. St. Rep. 684; *State v. Laclède Gaslight Co.*, 102 Mo. 472, 482, 14 S. W. 974, 15 S. W. 383, 22 Am. St. Rep. 789; *Union Pac. R. Co. v. Chicago, R. I. & P. R. Co.*, 163 U. S. 564, 592, 16 Sup. Ct. 1173, 41 L. Ed. 265; *Id.* 10 U. S. App. 192, 2 C. C. A. 174, 51 Fed. 309. If the rule were otherwise, no corporation, unless it had a perpetual existence, could acquire land in fee, and in that event the objection made to the lease, based on the length of the term thereby created, would apply equally well if the grant had been in fee. The lease in question created an interest in land which was doubtless supposed to be of considerable value when the lease was executed; and although the interest so created was what is usually termed a 'chattel interest,' the term being less than a freehold, yet it was an interest which was salable during the life of the corporation or on its dissolution, and might have become a very valuable asset of the bank. Such terms as the one created by this lease are sometimes as marketable as estates in fee, and we perceive no reason why the instrument which created it should be held invalid, any more than a deed conveying an estate in fee, which would outlast the life of the bank. A corporation, like a natural person, should be allowed

to hold and enjoy a leasehold estate that will outlast its own existence, provided it can be alienated at or prior to its dissolution. Moreover, the rule being that, in such a case as the one at bar, the personal covenant of the corporation to pay rent would not be enforceable against it after the expiration of its charter (*Lorillard v. Clyde*, 142 N. Y. 456, 37 N. E. 489, 24 L. R. A. 113, and cases there cited), it is not apparent that any sufficient reasons exist, based on the length of the term, to render the lease invalid."

BANKRUPTCY — DISCHARGE — FRAUD.—The question of fraud in conveyances made prior to July 1, 1898, cannot be determined in hearing an application by a bankrupt for his discharge in bankruptcy proceedings. The discharge of a bankrupt is personal to himself, and does not affect any lien, either by contract or judicial proceedings, upon his assets. *Paxton v. Scott* (Neb.), 92 N. W. 611.

A suit was instituted in a State court by the trustee of a voluntary bankrupt to set aside conveyances of real estate and to obtain the surrender of life insurance policies, once held by the bankrupt, and by him, prior to the passage of the Bankrupt Law, turned over to his wife. The State court dismissed the proceedings as to the land, but held that the insurance policies were a portion of the bankrupt's estate and should be turned over to the trustee. The bankrupt was discharged in the Federal District court, and a claim was then made in the State court that the discharge operated in bar of the proceedings there—that the entire question was *res judicata*, and that the State court had no jurisdiction to proceed further.

Per Hastings, C. J.:

"We are not able to sustain this contention as to the effect of the discharge. A voluntary bankrupt may present his application for discharge within one month after he is adjudged a bankrupt, and must do so within twelve months. The hearing on this application will not ordinarily be stayed pending protracted litigation in other courts, it being the policy of the Bankrupt Law to secure the debtor's discharge as soon as consistent with justice. Low. Bankr. p. 302, and cases cited: *In re Crenshaw* (D. C.), 95 Fed. 633; *In re Cornell* (D. C.), 97 Fed. 29. The effect of the discharge is personal to the bankrupt, and it does not affect any lawful lien, charge, or incumbrance existing on his property, but judgment may be speedily entered thereon *in rem*. Low. Bankr. p. 314, citing *Long v. Bullard*, 117 U. S. 617, 6 Sup. Ct. 917, 29 L. Ed. 1004. The discharge of the bankrupt does not affect securities, and they are subject to a judgment or decree *in rem*, but the creditor applying for such remedy may be required to await the result of the bankrupt's discharge if the bankrupt or assignee insists upon it. If the creditor have an attachment or other lien, he may have a special judgment entered *in rem*. Low. Bankr. secs. 396, 397. The Bankruptcy Law was carefully designed to save all liens against property from being affected by the discharge, and its terms seem ample for that purpose. Section 14 [U. S. Comp. St. 1901, p. 3427] provides that the bankrupt shall be discharged on his application, unless he has—First, committed an offense punishable by imprisonment, as provided in the act (such offenses are only concealment of property from the trustee and making a false oath in connection with the bankruptcy proceedings); second, fraudulently, to conceal his true financial condition and